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September 25, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Tariff to Introduce BellSouth® Integrated Solutions*  
Docket No. 03-00512

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Comments in Support of its Tariff to Introduce BellSouth® Integrated Solutions in and Opposition to Position of Consumer Advocate Division*. Copies of the enclosed are being provided to the Consumer Advocate Division.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Tariff to Introduce BellSouth® Integrated Solutions*

Docket No. 03-00512

**COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC.**  
**IN SUPPORT OF ITS TARIFF TO INTRODUCE**  
**BELLSOUTH® INTEGRATED SOLUTIONS AND IN OPPOSITION**  
**TO POSITION OF CONSUMER ADVOCATE DIVISION**

**INTRODUCTION AND OVERVIEW**

BellSouth's *Integrated Solutions Bundle* has been fashioned to address specific customer needs by combining various products, both regulated and unregulated, that customers can use together to address business needs. In that sense, the offering is truly, as the name suggests, an "integrated" solution for business customers. BellSouth's integration of these services creates ease for customers by providing a group of services at a single price. This offering is a bundle of telecommunications services, information services, and customer premises equipment ("CPE") that is sold together for a discounted single price, based on the configuration of the customer's choosing.

This bundled offer is the result of Tennessee's dynamic and competitive business market, and it represents BellSouth's efforts to listen to its customers needs and to answer with solutions that work for customers. Like BellSouth, many CLECs have also developed offerings to answer this need. BellSouth's offer constitutes a competitive response by BellSouth to similar offers from those competing carriers that are and have

been providing such integrated solutions in the marketplace, both in Tennessee and throughout BellSouth's region, for quite some time. These firms – US LEC, Xspedius, NuVox, NewSouth, Network Telephone and XO, to name a few – have bundled voice and data services with the necessary CPE to provide a complete integrated service package to business customers. In today's world, business customers want and demand services such as high-speed internet connections, e-mail, web hosting, and other information services in addition to basic local exchange service in order to meet their business needs. BellSouth's introduction of this bundle is designed to meet these needs and will further promote competition in Tennessee's already competitive marketplace.

In its pleading to intervene, the Consumer Advocate and Protection Division ("CAD") raises questions about the application of the requirement, imposed by the Telecommunications Act of 1996 (the "1996 Act"), that Incumbent Local Exchange Carriers ("ILECs") make "telecommunications services" available at wholesale rates to competing carriers. On the basis of this sole support, the CAD urges the Tennessee Regulatory Authority (the "Authority") to mandate the resale of Customer Premises Equipment ("CPE") and nonregulated information services in BellSouth's bundle, despite the fact that neither are telecommunications services. The Authority should decline this invitation to expand the resale obligation and impose new regulatory burdens that create a disincentive to development of new offerings (and new discounts) to customers.

In addition to the resale argument raised by the Consumer Advocate, BellSouth has received a Staff data request relating to the application of termination liability

charges to the *Integrated Solutions Bundle*. As reflected in BellSouth's response to that data request, BellSouth will calculate and bill termination charges, triggered if customers terminate early without cause, separately for the regulated components of the bundle and the nonregulated components of the bundle. Consequently, any customer choosing to terminate its contract early and without cause will receive a bill for termination charges that contains two separate and distinct line items, one reflecting a termination charge associated with the termination of regulated service and the other reflecting termination charges associated with the termination of nonregulated services. The termination charge for the regulated services will be calculated consistent with BellSouth's tariff for termination liability. The termination charges associated with the termination of nonregulated services will be consistent with the terms contained in the customers' service contract, as these charges are not covered by BellSouth's tariff, which is applicable only to regulated services.

**COMPONENTS OF THE  
BELLSOUTH® INTEGRATED SOLUTIONS BUNDLE**

BellSouth's tariff clearly defines the services and products offered in BellSouth's *Integrated Solutions Bundle*. These services are:

| <u>Product</u>              | <u>Regulated or Nonregulated</u> | <u>Regulatory Classification of Product/Service</u> |
|-----------------------------|----------------------------------|---|
| Voice Channels              | Regulated                        | Telecommunications                                  |
| Business Line               | Regulated                        | Telecommunications                                  |
| Interoffice Facilities      | Regulated                        | Telecommunications                                  |
| Dedicated Internet Access   | Nonregulated                     | Information   |
| E-mail Boxes                | Nonregulated                     | Information   |
| Shared Web Hosting          | Nonregulated                     | Information   |
| Customer Premises Equipment | Nonregulated                     | CPE   |

In addition, BellSouth's offering includes additional optional services, which customers can include at an additional cost. They are:

| <u>Name of Service</u>     | <u>Regulated or Nonregulated</u> | <u>Regulatory Classification of Product/Service</u> |
|----------------------------|----------------------------------|---|
| Additional Voice Channels  | Regulated                        | Telecommunications                                  |
| Additional Data Channels   | Regulated                        | Telecommunications                                  |
| Specified Calling Features | Regulated                        | Telecommunications                                  |
| Direct Inward Dialing      | Regulated                        | Telecommunications                                  |
| Frame Relay                | Regulated                        | Telecommunications                                  |
| Dedicated Internet Access  | Nonregulated                     | Information   |

## DISCUSSION OF AUTHORITY

### I. BELLSOUTH'S INTEGRATED SOLUTIONS BUNDLE IS CONSISTENT WITH BELLSOUTH'S TERMINATION LIABILITY TARIFF.

As set forth in BellSouth's tariff, BellSouth will calculate termination liability consistently with the requirements of BellSouth's termination liability tariff. The BellSouth termination liability tariff applies to regulated services only. Consequently, BellSouth will apply the termination liability limitations in that tariff to all of the regulated components of the BellSouth *Integrated Solutions Bundle*. As set forth in BellSouth's response to Staff data requests, BellSouth is able to separately calculate, and separately note on a customer's bill, the application of termination charges to regulated versus nonregulated services.

There can be no support for any argument that BellSouth must, in addition, apply its termination liability tariff to those components of the *BellSouth® Integrated Solutions Bundle* that are nonregulated and outside the jurisdiction of the Authority. Not only does the tariff by its very terms not apply to such unregulated services, but there is no statutory support for jurisdiction of the Authority to impose the requirements of a tariff defining termination liability requirements upon services outside its jurisdiction.

### II. THE CAD WRONGLY URGES THE AUTHORITY TO REQUIRE RESELL IN A FASHION THAT IS NOT REQUIRED BY THE ACT.

Because the *Integrated Solutions Bundle* will provide customers with another choice of integrated service offerings, BellSouth should be able to offer this bundle in competition against other providers without being subjected to new resale obligations. The *Integrated Solutions Bundle* is not subject to the resale requirements of the 1996

Act because it contains telecommunications services as well as information services and CPE that are combined in a single offering to the customer. Section 251(c)(4) of the 1996 Act limits an ILEC's resale obligation to "telecommunications services" provided to retail subscribers. BellSouth currently makes available for resale all telecommunications services pursuant to federal and state requirements, and the telecommunications services that are part of the *Integrated Solutions Bundle* (i.e., MegaLink, PRI, 1FB, Frame Relay) are currently available for resale from BellSouth on a stand-alone basis. By contrast, CPE and information services – whether offered on a stand-alone basis or as part of a bundle – are not available for resale. Also, as a single integrated offering, there is no statutory resale requirement that would obligate BellSouth to break up the *Integrated Solutions Bundle* into individual component services in order to make them available for resale.

ILECs are obligated to resell **telecommunications services**, nothing more. When an ILEC offers other products or services, such as **CPE or information services**, the ILEC has no obligation to offer these products or services for resale, either on a stand-alone basis or as part of a bundle. Moreover, as a matter of regulatory policy, the Authority should encourage competitors to develop innovative offers, including bundles or packages of regulated and nonregulated services and products. Such innovation would be stifled if the Authority were to impose additional resale obligations, thereby denying Tennessee customers innovative offerings that are the fruits of competition.

In support of its opposition to the *Integrated Solutions Bundle*, the CAD states that "BellSouth has set forth no statutory authority for exempting the subject service

from the Act, nor has BellSouth offered any authority for the position that 'unregulated' services are not subject to resale." The only other claim made by the CAD is that "BellSouth has not offered any state or federal authority for the position that bundling a product which is subject to resale with a product which is not subject to resale exempts the bundled product."<sup>1</sup>

As support for its position, the CAD cites only one statute, Section 251(c)(4) of the federal Act, which as discussed above, requires only that ILECs offer at "wholesale" rates any **telecommunications services** that the carrier provides at retail to subscribers who are not telecommunications carriers (emphasis added). This statute supports BellSouth's position and undercuts the CAD's position. The term "telecommunications services" is defined by the Act, and as set forth in the chart above, several components of the bundle clearly fall outside of this definition.

It is illogical to argue, as does the CAD, that a service which is not a telecommunications service and which is not available for resale when sold on a standalone basis is magically transformed into a telecommunications service that must be available for resale when it is included as part of a bundle. Such an argument also ignores binding FCC precedent.

In its 2001 *Bundling Report and Order* in CC Docket 96-91 and 98-183, the FCC clarified that facilities-based carriers may offer bundled packages of information and telecommunications services at a single price, subject only to existing safeguards. These existing safeguards include the resale of the **telecommunications services** that are included in the bundle and the Computer III requirements that ILECs unbundle the underlying transmission facilities used by its enhanced services. The FCC declined,

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<sup>1</sup> See paragraphs 5 and 6 of CAD's *Petition to Intervene*.

however, to establish any new safeguards with respect to bundles comprised of information and telecommunications services, and the FCC certainly did not require that such a bundle be made available for resale simply because the bundle includes a telecommunications service. On the contrary, the FCC recognized the stand-alone nature of bundled service offerings and declined to require that such bundles be broken into discreet price parts. Indeed, the FCC issued safe harbor rules for reporting telecommunications services revenue for bundled service offerings for universal service purposes to account for the fact that bundles have both telecommunications and information services.

BellSouth's *Integrated Solutions Bundle* provides business customers multiple services that are discounted at a single price. With this integrated bundle, business customers in Tennessee have another choice in the marketplace. The customer can weigh the benefits of purchasing the discounted bundled offer rather than incurring separate transaction costs for assembling the individual services in the bundle.<sup>2</sup> The bundle will provide customers with another choice of integrated service offerings, and BellSouth should be able to offer this bundle in competition against other providers without being subject to new resale obligations. As explained above, Section 251(c)(4) of the federal Act limits an ILEC's resale obligations to "telecommunications services" provided to retail subscribers. There is no statutory resale requirement that would obligate BellSouth to either make the integrated bundle available for resale or break up its bundle into individual separately discounted component services in order to make the telecommunications services included therein available for resale.

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<sup>2</sup> See FCC's *Bundling Report and Order*, released March 30, 2001, in FCC Docket 01-98, CC Docket Nos. 96-91, 98-183, ¶¶ 6 and 10 (March 30, 2001).

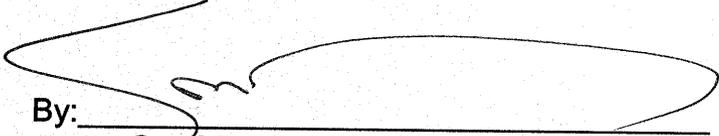
The underlying wholesale services facilities used for providing BellSouth's enhanced services are available for purchase through BellSouth's FCC Tariff No. 1, Section 28. Thus, a carrier seeking to replicate the *Integrated Solutions Bundle* can purchase the stand-alone telecommunications services at the resale discount (or UNE prices, where applicable), can obtain underlying wholesale service through BellSouth's FCC tariff, and can provide its own information services or obtain such services from numerous other providers in order to compete against BellSouth's integrated offering. Under the circumstances, there is no reason that additional regulatory requirements should be imposed upon the *Integrated Solutions Bundle* and doing so would only inhibit, not promote, competition.

Authority policy should promote, rather than discourage the development of innovative bundles and packages for Tennessee customers. Adopting the CAD's position would not only be contrary to federal law, it would discourage the development of such bundles and packages. The FCC has already considered issues relating to the bundling of telecommunications products with unregulated CPE or enhanced services. The CAD's petition wrongly encourages the TRA to ignore FCC precedent and chart an

inconsistent course toward increased regulation and dampening the development of innovative and creative offerings that benefit Tennessee customers.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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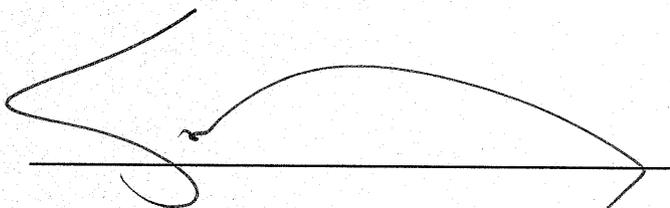
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- Hand
- Mail
- Facsimile
- Overnight
- Electronic

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A handwritten signature in black ink, appearing to read 'Vance Broemel', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'V'.